THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 5th day of June,2007

W.P.No.26632 and 26701 of 1997

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Between:-

National Geophysical Research Institute, represented by its Director (a Unit of Council of Scientific & Industrial Research) Uppal Road, Hyderabad-500 007 … Petitioner

and

The Judge, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.26632 and 26701 of 1997

COMMON ORDER:

In these two Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

These Writ Petitions are filed against the Awards dated 26-4-1994 passed in I.D.Nos.275 and 276 of 1993 on the file of Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad respectively. Petitioner is the management and the 2nd respondent, in both the cases, are workwomen.

Respondent No.2 herein raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short the 'Act') before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad aggrieved by their termination from service with effect from 21-6-1983. It is the case of the respondent-workwomen that they were appointed as Malans (Gardeners) in the respondent-organization with effect from 6-10-1982 and they were drawing Rs.530/- per month as on the date of termination of their service. The orders of termination of their services are arbitrary, illegal and contrary to the provisions of Section 25-F&H of the Act. Petitioner-management filed a detailed counter stating that the petitioner-Institute is not an 'industry' as defined under Section 2(j) of the Act. Therefore, the very petitions under Section 2-A(2) of the Act are not maintainable. The Institute does not produce or distribute any goods as is done in an industry.

The research work of the Institute cannot be treated as carrying on systematic activity for production or distribution of goods or carrying on trade or business. Further, the dispute was raised after 7 years of their purported termination and as such, the same cannot be entertained. Moreover, the workwomen have not put in minimum two years of service as casual labour as on 1-7-1983 with a minimum of 240 days per year. Therefore, the provisions of Section 25-F of the Act are not attracted. On the basis of the above pleadings, the following points were formulated by the Tribunal for its consideration:

1. Whether the respondent is an industry ?
2. Whether the termination of service of the petitioner is bad in law?
3. To what relief, the petitioner is entitled to ?

Before the Tribunal, workwomen examined themselves as W.W.1 and marked Ex.W1-termination order. On behalf of the Management, M.Ws.1 and 2 were examined and Exs.M1 to M35 were marked.

Insofar as point No.1 is concerned, after referring to various judgments relied upon by either side, the Tribunal held that the petitioner-institute is an industry and, therefore, the petitions under Section 2-A(2) of the Act are maintainable. Insofar as the termination is concerned, on the basis of evidence, it was found that the respondent-workwomen had put in more than 240 days of service preceding the date of their termination and as such, the same is in violation of the provisions of Section 25-F of the Act. In the result, the petitioner herein was directed to reinstate the workwomen into service within one month from the date of publication of the Award. Further, the workwomen shall have the benefit of continuity of service; however, the back wages were denied. Aggrieved by the same, the management filed the present Writ Petitions.

Learned counsel for the petitioner strenuously contended that the petitioner-Institute is not an 'industry' and is only a Research Institute engaged in the scientific research. It maintains gardens for the purpose of institution; but that itself does not mean that the Institute is an industry as defined under Section 2(j) of the Act. In this regard, learned counsel relied upon the Judgments reported in **PHYSICAL RESEARCH LABORATORY v. K.G. SHARMA**[1], **RUTH SOREN v. MANAGING COMMITTEE, EAST I.S.S.D.A.**[2] **PROJECT DIRECTOR, DISTRICT LITERACY SAMITI v. MAMTA SHRIVASTAVA**[3], **HIMANSHU KUMAR VIDYARTHI v. STATE OF BIHAR**[4] and **THE MANAGEMENT OF INDIA GOVERNMENT MINT, HYDERABAD v. WORKMEN OF INDIA GOVT.MINT & ANOTHER**[5].

None appears for the respondents.

In **PHYSICAL RESEARCH LABORATORY** case (1 supra), the Apex Court held as under:

> "**11.** With respect to research institutes this Court in *Bangalore Water Supply* 1 has observed as under: (1978(2)SCC pp. 271-72, para 113)
>
> > "Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more case value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion

of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organization, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit motive, are industries."

This extract is taken from *Physical Research Laboratory v. K.G. Sharma, (1997) 4 SCC 257* , at page 266 :

13. It is nobody's case that PRL is engaged in an activity which can be called business trade or manufacture. Neither from the nature of its organisation nor from the nature and character of the activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

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In **RUTH SOREN** (2 supra), the Supreme Court held as under:

This extract is taken from *Ruth Soren v. Managing Committee, East I.S.S.D.A.,(2001) 2 SCC 115* , at page 117 :

"4 . An "establishment" for the purposes of the Act means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act,

would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organized activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19(1)(*g*) of the Constitution, would not be one falling within the scope of "establishment" under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that *Unni Krishnan case* itself made a distinction between what was stated in *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa*."

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In **MAMTA SHRIVASTAVA**'s case (3 supra) following **PHYSICAL RESEARCH LABORATORY** case (1 supra), Madhya Pradesh High Court held that the District Literacy Samiti is not an 'industry' and even though it is achieving its target to eradicate illiteracy in a systematic manner with the help of its employees, the Samiti is not an industry and the respondent therein cannot be said to be 'workman' within the meaning of the Industrial Disputes Act,1947.

In **HIMANSHU KUMAR VIDYARTHI** case (4 supra), the Supreme Court held that the daily wage employees, who were not appointed in accordance with law cannot claim right over the said posts and their disengagement is not arbitrary and cannot be termed as 'retrenchment' under the Act.

In **THE MANAGEMENT OF INDIA GOVERNMENT MINT** case (5 supra), this Court held that Mint performs regal functions and as such, it is not an industry within the meaning of Section 2(j) of the Act.

Before going to the merits of the case, it may be necessary to notice various judgments rendered by the Apex Court for the purpose of deciding the question whether a particular organization is an 'industry'

or not. The majority laid down the dominant nature test for deciding the said question, in **BANGALORE WATER SUPPLY & SEWERAGE BOARD v. A. RAJAPPA**[6]. In fact, while deciding **COIR BOARD v. INDIRA DEVI**[7] case, the apex Court has reviewed the whole situation and held as under:

> "17. The subsequent decisions of this Court have left some uncertainty on the question of activities and organizations that can be labelled as industries under the Industrial Disputes Act. To take only a few recent cases, in the case of Physical Research Laboratory v. K. G. Sharma (1997) 4 SCC 257 : (1997 AIR SCW 1594) this Court, after discussing the definition of industry as propounded in the Bangalore Water Supply case (AIR 1978 SC 548) (supra) and other cases ultimately came to the conclusion that a Physical Research Laboratory was not an industry. This Court emphasised that the principles which were formulated in the Bangalore Water Supply Case (supra) were formulated because this Court found the definition of the word 'industry' vague. Therefore, while applying the 'traditional' test approved by this Court in the Bangalore Water Supply's case (supra) to determine what can be regarded as sovereign functions, the change in the concept of sovereign functions of a constitutional Government which involved varied functions had to be kept in mind. The activity of a Physical Research Laboratory would not be covered by the definition of an industry under Industrial Disputes Act.
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> 18. In an earlier judgment in the case of Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph (1996) 8 SCC 489 : (1996 AIR SCW 1365), the establishment of the Sub-Divisional Inspector of Post was held not to be an industry but as an exercise of a sovereign function. In the case of Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange v. Union of India (1997) 6 SCC 723 : (1997 AIR SCW 2819), this Court, after examining the case law, held that workmen employed in the departmental canteen of Telephone Nigam Limited and admittedly holding civil posts were not workmen within the meaning of the Industrial Disputes Act. However, a Bench of three Judges of this Court in Civil Appeal No. 7845 of 1997, General Manager, Telecom v. S. Srinivasa Rao decided on 18-11-1997 (reported in 1998 AIR SCW 270) held that the cases of Sub-Divisional Inspector of Post (supra) and Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange (supra) were not correctly decided in view of the ratio laid down by a Bench of seven Judges of this

Court in the case of Bangalore Water Supply and Sewerage Board (AIR 1978 SC 548) (supra).

19. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply and Sewerage Board (AIR 1978 SC 548) (supra) it is necessary that the decision in Bangalore Water Supply and Sewerage Board's case (supra) is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities.

20. Undoubtedly, it is of paramount importance that a proper law is framed to promote the welfare of labour employed in industries. It is equally important that the welfare of labour employed in other kinds of organisations is also promoted and protected. But the kind of measures which may be required for the latter may be different, and may have to be tailored to suit the nature of such organisations, their infra-structure and their financial capacity as also the needs of their employees.

23. In fact, in 1982, the legislature itself decided to amend the definition of “industry” under the Industrial Disputes Act, 1947 by enacting the Amending Act 46 of 1982. In the Statement of Objects and Reasons for the Amending Act 46 of 1982, clause 2 expressly refers to the decision of this Court in *Bangalore Water Supply and Sewerage Board* 10 and the wide interpretation given to the definition of the term industry in the Industrial Disputes Act. The Statement of Objects and Reasons states, inter alia, as follows:

> “The Supreme Court in its decision in the *Bangalore Water Supply and Sewerage Board* v. *Rajappa*, had, while interpreting the definition of ‘industry’ as contained in the Act, observed that the Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term ‘industry’. While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific, research or training institutes,

> institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term 'industry'. However, keeping in view the special characteristics of these activities and the fact that their workmen also need protection, it is proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. All these have been taken into account and the term 'industry' has been made more specific while making the coverage wider...."

Unfortunately, despite the legislative mandate the definition has not been notified by the executive as having come into force.

24. Since the difficulty has arisen because of the judicial interpretation given to the definition of "industry" in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by *Bangalore Water Supply and Sewerage Board case* it is an organisation where there are employers and employees. The organisation does some useful work for the benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

25. We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon'ble the Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this Court in *Bangalore Water Supply and Sewerage Board*.

and directed that the matter be placed before the Hon'ble the Chief

Justice of India to consider whether a larger Bench should be constituted to reconsider the decision in **BANGALORE WATER SUPPLY** case. The Court also felt that elimination of profit motive or a desire to generate income as the purpose of industrial activity has led to a large number of philanthropic and charitable activities being affected by the Industrial Disputes Act. In a number of cases where the organisation is run by voluntary social workers, they are unable to cope up with the requirements of Industrial Disputes Act. This has led to a cessation of many welfare activities previously undertaken by such organisations which has deprived the general community of considerable benefit and the employees of their livelihood.

In the case of **PHYSICAL RESEARCH LABORATORY** (1 supra) after discussing the definition of 'industry' as propounded in **BANGALORE WATER SUPPLY** case and other cases, ultimately came to the conclusion that Physical Research Laboratory was not an industry. The activity of the Research Laboratory would not be covered by the definition of 'industry' under the Industrial Disputes Act. Here, it may have to be noticed that the question in the said case was whether the appellant, who conducted research in a scientific laboratory was a 'workman' and the institution is an 'industry'. It was held that since the service conditions are governed by Regulations, the Tribunal was devoid of jurisdiction to entertain an application under the Act for deciding the dispute.

Here, in the case on hand, it has to be seen whether the respondents are workmen within the meaning of Industrial Disputes Act and whether the activity undertaken by the petitioner is an 'industry' by applying the dominant nature test laid down at para-143 of **BANGALORE WATER SUPPLY** case. In the said case, it was held that even the Departments discharging the sovereign functions, if there

are units, which are industries and they are substantially severable, then they can be considered to come within the meaning of 'industry' in Section 2(j) of the Act. The activity undertaken by the respondents herein is nothing to do with the research work. Their job and their nature of work of sweeping, cleaning, gardening and other works done even in a scientific research institute are severable and they can be treated as an 'industry' within the meaning of Section 2(j) of the Act and if this is taken into consideration, the petitioner-institute can be called an industry for the purpose of deciding the case of the respondents insofar as the Department in which they are working. In view of various judicial interpretation to the definition of 'industry' under the Industrial Disputes Act, it is difficult for this Court to come to a conclusion that the petitioner-organization is not an industry.

Further, looking to the predominant purpose for which the petitioner-organization was set up, it cannot be called an industry. But, while dealing with such a situation, in **COIR BOARD** case, the apex Court held that, however, if one were to apply the tests laid down by **BANGALORE WATER SUPPLY** case, it is an organization where there are employers and employees. The organization, which has some useful work for the benefit of others will have to be called an industry under the Act.

Be that as it may, in **COIR BOARD**'s case (7 supra), the Apex Court held that, however, if one were to apply the tests laid down by t h e **BANGALORE WATER SUPPLY** case (6 supra), it is an organization where there are employers and employees. The organization, which does some useful work for the benefit of others, will have to be called an 'industry' under the Act. May be, looking to the predominant purpose for which the petitioner-organization was set up, it cannot be called an industry. While dealing with such situation,

as noticed above, in the **COIR BOARD** case and elaborately discussing **BANGALORE WATER SUPPLY** case, the Supreme Court held that Coir Board is an industry. Therefore, I am of the opinion that the Tribunal has not committed any error in coming to the conclusion that the petitioner-Institute is an industry within the meaning of Section 2(j) of the Act. The Writ Petitions are devoid of any merit and are liable to be dismissed.

Accordingly, the Writ Petitions are dismissed. No order as to costs.

05-6-2007

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[1] AIR 1997 SC 1855

[2] AIR 2001 SC 380

[3] 2006(1) LLJ 103 (MP)

[4] 1997(4) SCC 391

[5] 1983(1) ALT (SN) 55

[6] 1978(2) SCC 213

[7] 1998(3) SCC 259